IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CIVIL APPLICATION NO.2364 OF 2007
IN
FIRST APPEAL NO.1567 OF 2007

Office Notes, Office Memoranda of Coram, appearances, Court's order or directions	Court's or Judge's orders
	Mr.R.D.Soni for the Applicant. Mr.S.B.Shetye i/b Mr.H.E.Parwe for the Respondents Nos. 1 to 4. **CORAM: D.K.DESHMUKH &** V.M.KANADE**, JJ.** **DATED:** 6TH DECEMBER, 2007

P.C.:

1. So far as clauses (5) (6) & (7) of the operative part of the decree impugned in the First Appeal is concerned, it is regarding specific performance of the contract. In our opinion, as the Appeal has been admitted and it is the First Appeal, execution of the decree in terms of clauses (5), (6) & (7) will have to be stayed.

Accordingly, execution of the decree passed in terms of clauses (5), (6) & (7) of the operative part of the impugned decree is stayed during the pendency of the Appeal.

2. So far as clause (4) is concerned, the learned Counsel appearing for the Plaintiffs/Respondents informs that they have already deposited the amount which they have been directed to deposit in the trial court.

We direct the trial court to invest that amount in fixed deposit in a nationalised bank to the credit of this appeal.

3. So far as decree in terms of clause (2) & (3) is concerned, it is clear that the Plaintiffs are in possession of the suit land 1A, and therefore consequently the Defendant/Appellant has been restrained from disturbing possession of the Plaintiffs of the suit land 1A. In our opinion, as the final finding has been recorded that the Plaintiffs are in

possession of that land, it will not be appropriate to stay the order of injunction restraining the Defendant from disturbing the possession of the Plaintiffs. Further, in our opinion, the Plaintiffs cannot be permitted to create third party rights in the property. Hence, the decree passed in terms of clauses (2) & (3) of the operative part of the decree is not stayed, however, the Plaintiffs are restrained from creating third party rights, alienating, encumbering or parting with possession of the suit land 1A without seeking leave of the court.

4. Civil Application disposed of.

(D.K.DESHMUKH, J.)

(V.M.KANADE, J.)